

Revised 07/06 WDNV

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**FORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)**

14 CV 6251 W

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks to form a *pauperis* status, each plaintiff must submit an in forma pauperis application and a signed application or the case shall not be considered will be the plaintiff who filed an application and Authorization

1. MISAEEL MONTALVO 131327

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed R Civ P 10(a) the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so

1. COMMISSIONER OF CORRECTION F. LAMY

2. COMM. CORR. F. SULLIVAN

3. SHERIFF T. HOWARD

4. UNDER SHERIFF MARK WHIPPLEMAN

5. SUPER. T. DIUNA

6. FIRST D.S. M. REARDON

* PLEASE SEE ATTACHED PAGE

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper

Name and Prisoner Number of Plaintiff: MISAEEL MONTALVO 131327

Present Place of Confinement & Address: ECHC 40 DELAWARE AV.

BUFFALO NY 14202

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

CAPTION

1. PLAINTIFF MONTAÑO VS.

7. CHIEF HARRIS

8. CAPT. HARTMAN

9. SGT. VSINSKI

10. SGT. KOPPEL

11. SGT. DIMOND

12. SGT. McANDREW

13. SGT. JOHN DOE

14. DEP. SHERIFF JOHN DOE

15. DEP. SHERIFF BROWN

16. DEP. SHERIFF HARVEY

17. NURSE PRACTITIONER SHARON

18. NURSE PRACTITIONER JANET

19. COUNTY OF FRIE

20. KEEFE KIOSK ENTITY

21. THOMAS REUTER

22. THOMAS J. LOUGHREN

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper

Name of Defendant: THOMAS J. LOUGHREN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

(SU) 485-2346

Name of Defendant: FREDERICK LAMY

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

Name of Defendant: FRANCIS SULLIVAN

(If applicable) Official Position of Defendant: COMMISSIONER

(If applicable) Defendant is Sued in ☒ Individual and/or ☒ Official Capacity

Address of Defendant: 80 S. SWAN ST. 12th FLOOR ALBANY NY 12210

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

_____ Dismissed (check the box which indicates why it was dismissed):

_____ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;

_____ By court for failure to exhaust administrative remedies;

_____ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;

_____ By court due to your voluntary withdrawal of claim;

_____ Judgment upon motion or after trial entered for

_____ plaintiff

_____ defendant.

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes _____ No _____

If Yes, complete the next section. NOTE: *If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.*

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes _____ No _____

If not, give the approximate date it was resolved. _____

Disposition (check the statements which apply):

Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|-------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • Denial of Medical Treatment |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You **must** include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995). **Fed.R.Civ.P. 10(b)** states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) PLEASE SEE ATTACHED PAGES
defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes _____ No If yes, what was the result? DENIED

Did you appeal that decision? ☒ Yes _____ No If yes, what was the result? DENIED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) PLEASE ATTACHED PAGES
defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: _____

The relief I am seeking for this claim is (briefly state the relief sought): _____

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☒ Yes _____ No If yes, what was the result? DENIED

Did you appeal that decision? ☒ Yes _____ No If yes, what was the result? DENIED

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

PLEASE SEE ATTACHED PAGES

Do you want a jury trial? Yes ☒ No _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on MAY 2, 2014
(date)

NOTE: Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.

x Misael Montalvo

Signature(s) of Plaintiff(s)

PRELIMINARY STATEMENT:

1. THIS IS A CIVIL ACTION SEEKING RELIEF AND/OR DAMAGES TO DEFEND AND PROTECT THE RIGHTS GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES. THIS ACTION IS BROUGHT PURSUANT TO 42 U.S.C. § 1983. THE COURT HAS JURISDICTION OVER THE ACTION PURSUANT TO 28 U.S.C. §§ 1331, 1343 (3) and (4), and 2201.
2. THE PLAINTIFF IS A CITIZEN OF THE UNITED STATES AND A RESIDENT OF NEW YORK STATE. THE PLAINTIFF, MISABEL MONTALVO, IS CURRENTLY INCARCERATED AT THE BRICE COUNTY HOLDING CENTER (ECHC). PLAINTIFF, MISABEL MONTALVO, IS A DISABLED PERSON WHO SINCE THE AGE OF FIFTEEN SUFFERS FROM DIABETES AND MUST RECEIVE MEDICAL TREATMENT FOR HIS DISABILITY ON A DAILY BASIS.
3. THE PLAINTIFF SEEKS TO FURTHER ENFORCE THE JURISDICTION OF THIS COURT PURSUANT TO 42 USCA 1983 TITLE II OF THE AMERICANS WITH DISABILITIES ACT, OF 1990, SUBSECTION 504 OF THE REHABILITATION ACT OF 1973, 42 USCA 12132, 42 USCA (21.31, 29 USCA 794, 28 CFR, 35.105 AND FOR VIOLATIONS OF THE PLAINTIFFS RIGHTS UNDER THE UNITED STATES FIRST, EIGHTH AND

FOURTEENTH CONSTITUTIONAL AMENDMENTS.

4. THE GRAVEMENT OF THIS COMPLAINT IMMEDIATELY CONCERNS THE DISCRIMINATORY CUSTOM, POLICIES AND PRACTICES WHICH HAVE EXCLUDED THE PLAINTIFF FROM FULL PARTICIPATION IN THE KEEFE KIOSK COMMISSARY PROGRAM.
5. ECHC IS A PUBLIC ENTITY SUPERVISED AND MANAGED BY THE SHERIFFS OFFICE WHICH IS ALSO A PUBLIC ENTITY AND AS SUCH THE SHERIFFS OFFICE AND THE ECHC HAS CONTRACTED THE KEEFE KIOSK COMPANY WHICH IS A SEPARATE ENTITY TO MANAGE THE COMMISSARY PROGRAM WITHIN THE ECHC. WHEREFOR, THE SHERIFFS OFFICE, ECHC AND KEEFE KIOSK ENTITIES ARE MANDATED TO COMPLY WITH TITLE II OF THE ADA WHICH STATES, "PUBLIC ENTITY" SECTION, PROVIDES THAT "NO QUALIFIED INDIVIDUAL WITH A DISABILITY SHALL, BY REASON OF SUCH DISABILITY, BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY, OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY"⁶⁶⁹. SECTION 504 OF THE REHABILITATION

ACT PROVIDES THAT "[N] OTHERWISE QUALIFIED INDIVIDUAL WITH A DISABILITY IN THE UNITED STATES, . . . SHALL, SOLELY BY REASON OF HER OR HIS DISABILITY, BE EXCLUDED FROM THE PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY PROGRAM OR ACTIVITY CONDUCTED BY ANY EXECUTIVE AGENCY. . . ." THIS MEANS THAT ANY AGENCY - INCLUDING A DEPARTMENT OF CORRECTIONS, SHERIFF'S OFFICE, ETC. - THAT RECEIVES ANY FEDERAL FUNDING IS COVERED BY THE REHABILITATION ACT FOR ALL OF ITS SERVICES, PROGRAMS AND ACTIVITIES. FEDERAL AGENCIES AND PRISONS ARE NOT SUBJECT TO THE APA, BUT THEY ARE SUBJECT TO THE REHABILITATION ACT. DEPARTMENT OF JUSTICE REGULATIONS PROMULGATED UNDER THE STATUTES ARE APPLICABLE TO PRISONS AND JAILS.

6. PLAINTIFF ALLEGES AMONG OTHER THINGS THAT THE DEFENDANTS COMMISSIONERS OF CORRECTIONS

FREDERICK LAMY AND FRANCIS SULLIVAN, SHERIFF HOWARD, UNDER SHERIFF MARK WHIPPERMAN ET. AL, ARE POLICY MAKERS FOR THE SHERIFF'S OFFICE, CORRECTIONAL FACILITIES, JAILS AND JCHC AND AS SUCH THESE DEFENDANTS HAVE CREATED POLICIES IN THE JAIL MANAGEMENT DIVISION INMATE HANDBOOK THAT DELIBERATELY AND INTENTIONALLY DISCRIMINATE AGAINST THE PLAINTIFF WHO IS A DISABLED PERSON THAT SUFFERS FROM DIABETES AND IS ALLEGEDLY PRESCRIBED A SPECIAL DIET. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN ET. AL CREATED A POLICY OR CUSTOM UNDER WHICH UNCONSTITUTIONAL PRACTICES OCCURRED, OR ALLOWED THE CONTINUANCE OF SUCH A POLICY OR CUSTOM. THE DEFENDANTS WERE ALSO GROSSLY NEGLIGENT IN SUPERVISING SUBORDINATES WHO COMMITTED THE WRONGFUL ACTS. THE DEFENDANTS EXHIBITED DELIBERATE INDIFFERENCE TO THE RIGHTS OF INMATES BY FAILING TO ACT ON INFORMATION INDICATING THAT UNCONSTITUTIONAL ACTS WERE OCCURRING.

7. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA ET.AL IMPLEMENTED AND ENFORCED A POLICY IN THE REVERSED JAIL MANAGEMENT DIVISION INMATE HANDBOOK DATED JULY 2013 ON PAGE FOURTEEN "COMMISSARY ORDERING LEVELS" WHICH STATES "INMATES WITH DIETARY RESTRICTIONS WILL NOT BE ALLOWED TO ORDER ANY FOOD ITEMS ON COMMISSARY." PLAINTIFF WHO IS A DIABETIC AND ON A FRAUDULANT SPECIAL DIET HAS BEEN DISCRIMINATED AGAINST BY A POLICY THAT IS UNCONSTITUTIONAL WHICH EXCLUDES THE PLAINTIFF FROM RECEIVING THE BENEFITS FROM FOOD ITEMS BEING SOLD IN THE KEEFE KIOSK COMMISSARY PROGRAM. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DINA, KEEFE KIOSK ET.AL HAVE ^{BECN}ARBITRARY~~BEIN~~ THEIR POLICY MAKING AND HAVE FAILED TO MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST QUALIFIED INDIVIDUALS WITH A KNOWN DISABILITY. THESE DEFENDANTS HAVE REFUSED TO MODIFY SUCH UNCONSTITUTIONAL POLICIES THAT

BLATANTLY DISCRIMINATE AGAINST INMATES WHO SUFFER FROM DIABETES, AND MUST RELY ON AN ADEQUATE DIET MENU WHICH ALSO THE DEFENDANTS HAVE FAILED TO PROVIDE.

8. LAMY IS THE SUPERIOR OF SULLIVAN, SULLIVAN IS THE SUPERIOR OF HOWARD, HOWARD IS THE SUPERIOR OF WHIPPERMAN, WHIPPERMAN IS THE SUPERIOR OF DINA AND DINA IS CONTRACTED WITH KEEFE KIOSK WHICH HAVE ALL ACTED IN COLUSION TO DISCRIMINATE AGAINST THE PLAINTIFF BY EXCLUDING THE PLAINTIFF FROM PURCHASING NEARLY TWENTY SEVEN FOOD ITEMS IN COMMISSARY PROGRAM THAT ARE BENEFICIAL TO DIABETICS,

9. THE DEFENDANTS NURSE PRACTITIONER SHARON AND NURSE PRACTITIONER JANET HAVE SUBJECTED THE PLAINTIFF TO MEDICAL DECIBERATE INDIFFERENCE BECAUSE THE PLAINTIFF REQUIRED AN ADEQUATE DIET MENU TO STABILIZE HIS INSULIN LEVEL. HOWEVER, THE DEFENDANTS HAVE ALL

FAILED TO EMPLOY AN ADEQUATE DIETITIAN THAT WOULD IMPLEMENT A CONDUSIVE DIABETIC MENU, THE DEFENDANTS ARE ALL BEING SUED IN THEIR INDIVIDUAL AND OFFICIAL CAPACITY.

10. THE DEFENDANTS LAMY, SULLIVAN ET. AL HAVE BEEN MALICIOUS IN THEIR OFFICIAL CAPACITY WHEN IMPLEMENTING POLICIES WHICH RECKLESSLY DISREGARD THE RIGHTS OF DISABLED PERSONS.

11. THE PLAINTIFF ASSERTS THAT THE DEFENDANTS HOWARD, WHIPPERMAN, DIINA, REARDON, CHIEF HARRIS, CAPT. MARTIN, GRIEVANCE COORDINATOR SGT. MCANDREW ET. AL HAVE ALL VIOLATED THE PLAINTIFFS FIRST CONSTITUTIONAL AMENDMENT BY DEPRIVING THE PLAINTIFF FROM EXERCISING HIS RIGHT TO GRIEVE AND STONEWALLING THE PLAINTIFF FROM EXERCISING HIS DUE PROCESS RIGHTS

12. THE DEFENDANTS LAMY, SULLIVAN, HOWARD, ~~REA~~ WHIPPERMAN, DIINA, REARDON, HARRIS CAPT. MARTIN, SGT. MCANDREW ET. AL ALL HAVE A CUSTOM POLICY IN PRACTICE

OF RETALIATING AGAINST INMATES WHO PETITION THE GOVERNMENT FOR REDRESS BY PLACING SUCH INMATES ON TRANSFERS AND FABRICATING ERRONEOUS ALLEGATIONS THAT ARE WHOLLY UNCONSTITUTIONAL

13. THE DEFENDANTS LAMY, SULLIVAN, HOWARD WHIPPERMAN, DIINA, REARDON, CAPT. HARTMAN, SGT. MCANDREW, SGT. DIAMOND ET. AL HAVE ALL MALICIOUSLY AND SADISTICALLY ACTED WITH A CULPABLE STATE OF MIND TO DEPRIVE THE PLAINTIFF OF HIS RIGHTS UNDER THE UNITED STATES CONSTITUTION BY NOT PROVIDING THE PLAINTIFF WITH A SPANISH INTERPRETER WHICH PLAINTIFF DOES NOT SPEAK ENGLISH AND HAS BEEN SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT WHICH TAUTAMELANTS TO ATYPICAL AND SIGNIFICANT HARDSHIP.

STATEMENT OF FACTS

14. THE PLAINTIFF WHO IS A DISABLED PERSON AND SUFFERS FROM DIABETES WHICH SUCH TERM IS DEFINED UNDER S.S. (A) OF TITLE II OF THE ADA AS A QUALIFIED INDIVIDUAL WITH A KNOWN DISABILITY THE PLAINTIFF ON OR ABOUT NOV. 19 2011 WAS ARRESTED, TAKEN INTO CUSTODY AND DETAINED AT THE ECHC. THE PLAINTIFF IMMEDIATELY INFORMED JAIL OFFICIALS AND THE MEDICAL DEPARTMENT THAT HE DID NOT SPEAK ENGLISH AND NEEDED A SPANISH INTERPRETER. HOWEVER, SUCH REQUEST REMAIN TO NO AVAIL.
15. IN LIEU OF PLAINTIFF BEING A DIABETIC, THE DEFENDANTS NURSE PRACTITIONER SHARON AND JANET, AS OF NOV. 19th 2011 UP UNTIL THE CURRENT DATE OF MAY 1st 2014 HAS FAILED TO ENSURE THAT PLAINTIFF RECEIVED AN ADEQUATE DIABETIC DIET WHICH SUCH DELIBERATE INDIFFERENCE OF MEDICAL CARE HAS PLACED THE PLAINTIFF AT THREAT OF SUFFERING IRREPARABLE HARM.
16. ALTHOUGH PLAINTIFF HAS REPEATEDLY REQUESTED FOR THE NURSE PRACTITIONER SHARON

TO PRESCRIBE AND ORDER FOR JAIL OFFICIALS TO PROVIDE PLAINTIFF WITH SNACKS DURING THE LONG PERIOD HOURS OF 4:30 PM UNTIL APPROXIMATELY 9: AM WHICH IS THE DURATION THAT PLAINTIFF IS LEFT WITHOUT EATING AND THE PLAINTIFFS SUGAR LEVEL HAS BOTTOMED OUT BUT THE DEFENDANT NURSE PRACTITIONER SHARON HAS STATED "NO WE DO NOT ISSUE PRISONERS SNACKS."

17. ON OR ABOUT FEB 16, 2013 PLAINTIFF WAS CHARGED WITH ERRONEOUS BEHAVIOR ALLEGATIONS. PLAINTIFF DUE PROCESS WAS VIOLATED BY THE HEARING OFFICER DEFENDANT JOHN DOE CONDUCTED THE HEARING IN A DISCRIMINATORY AND PREJUDICIAL MANNER THAT WAS BIAS TO THE PLAINTIFF. DEFENDANT HEARING OFFICER JOHN DOE WHILE CONDUCTING THE HEARING ON OR ABOUT FEB 20, 2013 DENIED THE PLAINTIFF THE RIGHT TO HAVE A SPANISH SPEAKING INTERPRETER, THE RIGHT TO THE HEARING ASSISTANCE, THE RIGHT TO CALL WITNESSES, THE RIGHT TO CONDUCT LEGAL RESEARCH AND THE RIGHT TO A BILINGUAL INTERPRETOR

TO ASSIST PLAINTIFF WITH APPEAL PROCESS
(SEE EXHIBIT A)

18. THE DEFENDANT SGT. KINSKI CONSPIRED WITH DEPUTY DEFENDANT JOHN DOE BY NOT AFFORDING THE PLAINTIFF WITH A WRITTEN DISCIPLINARY REPORT SO THAT THE PLAINTIFF CAN HAVE PROPER NOTICE OF HIS CHARGES, THE DEFENDANT HEARING OFFICER KOPPEL CONDUCTED THE HEARING IN A MALICIOUS AND ARBITRARY MANNER. DEFENDANT KOPPEL FAILED TO REMAIN IMPARTIAL FACT FINDER OF EVIDENCE AND ALSO PRECLUDED THE PLAINTIFF FROM THE RIGHT TO HAVE THE HEARING RECORDED.

19. THE DEFENDANT H.O. KOPPEL SENTENCED THE PLAINTIFF 180 DAYS SHU. WHICH SUCH SOLITARY CONFINEMENT TANTAMOUNTED TO CRUEL AND UNUSUAL PUNISHMENT AND ATYPICAL AND INSIGNIFICANT HARDSHIP BECAUSE PLAINTIFF COULD NOT SPEAK ENGLISH AND ACCESS TO LAW MATERIAL IN SPANISH WAS DENIED, ACCESS TO LAW LIBRARY DENIED. DUE TO NO TRANSLATOR PLAINTIFF WAS DENIED THE RIGHT

TO CONDUCT LEGAL RESEARCH AND ACCESS TO COURTS FROM FEB 20 2013 TO JULY 26 2013. THE PLAINTIFF WHILE IN SOLITARY CONFINEMENT WAS SUBJECTED TO MEDICAL DELIBERATE INDIFFERENCE AS A DIABETIC BECAUSE HIS SUGAR LEVEL WOULD BOTTOM OUT AND HE HAD TO BE PROVIDED EMERGENCY MEDICAL ATTENTION ON NUMEROUS OCCASIONS. WHILE IN SHU. THE PLAINTIFF ON OR ABOUT APRIL 7 2013 NEARLY DIED WHILE IN SHU. IN THE EARLY AM HOURS CALLED FOR THE DEPUTY SHERIFF BECAUSE HIS SUGAR LEVEL HAD WENT TOO LOW. BUT THE DEPUTY SHERIFF NEVER ANSWERED. WHEN THE PLAINTIFF AWAKENED HE WAS BEING TREATED BY MEDICAL. (SEE EXHIBIT B)

20 DURING THE PERIOD OF NOV. 19 2011 UP UNTIL FEB 10 2013 PLAINTIFF WAS ALLOWED TO PURCHASE FOOD ITEMS FROM COMMISSARY PROGRAM. AS INMATES WERE SUBMITTING COMMISSARY PURCHASE ORDERS THROUGH COMMISSARY PAPER SHEETS,

HOWEVER, ON OR ABOUT FEB 13 2013, THE ECHC HAD INSTALLED THE KEEFE KIOSK TOUCH-SCREEN EQUIPMENT DEVICE. IT WAS THEN THE DEFENDANTS LAMY, SULLIVAN, HOWARD, WHIPPERMAN, DIINA, KEEFE KIOSK ET. AL ALONG WITH THE HEALTH DEPT. OF MEDICAL, DEFENDANTS NURSE PRACTITIONERS SHARON AND JANET ACTED IN COLUSION WITH IMPLEMENTING A DISCRIMINATORY POLICY THAT DISCRIMINATED AGAINST DIABETICS AND PRECLUDED THE PLAINTIFF FROM PURCHASING FOOD FROM COMMISARY PROGRAM. (SEE EXHIBIT C)

21. ON OR ABOUT OCT. 6 2013, THE DEFENDANT DEPUTY SHERIFF BROWN RETALIATED AGAINST PLAINTIFF BECAUSE PLAINTIFF FILED GRIEVANCES AGAINST BROWN, ISSUED THE PLAINTIFF FABRICATED MISBEHAVIOR REPORTS.

(SEE EXHIBIT D)

22. ON OR ABOUT APRIL 23 2014 THE PLAINTIFF WITH ASSISTANCE FROM A SPANISH SPEAKING INMATE FILED A

GRIEVANCE AGAINST E.C. SHERIFFS OFFICE, ECHC EMPLOYEES AND MEDICAL DEPT. EMPLOYEES FOR DISCRIMINATING AGAINST THE PLAINTIFF AND IMPLEMENTING POLICIES THAT DISCRIMINATED AGAINST THE PLAINTIFF THUS EXCLUDING PLAINTIFF FROM FULL PARTICIPATION IN THE KEEFE COMMISSARY PROGRAM.

23. THE DEFENDANT GRIEVANCE COORDINATOR SGT. MCANDREW DENIED PLAINTIFFS GRIEVANCE AND REFUSED TO PROCESS SUCH SAID GRIEVANCE ALLEGING THAT INMATES CANNOT GRIEVE MEDICAL OR SITUATIONS THAT INVOLVE THE MEDICAL DEPT.

(SEE EXHIBIT E)

24. ON MAY 1ST 2014 THE DEFENDANT SGT. MCANDREW ON FOX SOUTH STATED TO THE PLAINTIFF, "THE POLICY ON PG. 14 IS MEDICALS DOING, THE SHERIFFS OFFICE CANNOT SUPERCEDE MEDICAL."

25. DEFENDANT LOUGHREN HAS A CUSTOM POLICY IN PRACTICE OF FAILING TO INVESTIGATE INMATES GRIEVANCES AND CONDUCTING INVESTIGATIONS. LOUGHREN FAILED TO BE IMPARTIAL. (SEE EXHIBIT F)

SUMMARY OF RELIEF SOUGHT

1. THE DEFENDANTS BE ORDERED BY THE COURT TO COMPENSATE PLAINTIFF IN THE AMOUNT OF ONE MILLION DOLLARS.
2. THE DEFENDANTS BE ORDERED BY THIS COURT TO PAY THE PLAINTIFF PUNITIVE DAMAGES IN THE AMOUNT OF TWO MILLION DOLLARS.
3. THE DEFENDANTS BE ORDERED TO PUT IN PLACE A SPANISH/BILINGUAL PROGRAM FOR INMATES WHO DO NOT SPEAK ENGLISH.
4. THE DEFENDANTS BE ORDERED BY THIS COURT TO RECORD ALL DISCIPLINARY HEARINGS AND TRANSCRIBE WRITTEN DISCIPLINARY NOTICES FROM ENGLISH TO SPANISH.
5. THE DEFENDANTS BE ORDERED BY THIS COURT TO PROVIDE TRANSLATION OF LEGAL MATERIALS, CASE LAW, LAW BOOKS AND TRANSLATION FROM ENGLISH TO SPANISH ON THE LEGAL RESEARCH PROGRAM THOMAS REUTER PREMISE FOUR.

6. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DIETITIAN FOR DIABETIC MENUS.
7. THE DEFENDANTS BE ORDERED BY THIS COURT TO REFRAIN FROM DISCRIMINATING AGAINST THE PLAINTIFF AND ALLOW FULL PARTICIPATION AND RECEIPT OF BENEFITS IN ALL PROGRAMS, SERVICES AND ACTIVITIES WITHIN A PUBLIC ENTITY.
8. THE DEFENDANTS BE ORDERED BY THIS COURT TO TAKE SENSITIVITY TRAINING AND LEARN HOW TO INTERACT WITH DISABLED PERSONS.
9. THE DEFENDANTS BE ORDERED BY THIS COURT TO IMPLEMENT AN ADEQUATE GRIEVANCE PROGRAM WHICH REMAINS IMPARTIAL AND PROCESSES ALL INMATES GRIEVANCES WITH A GRIEVANCE COMMITTEE PANEL.
10. THE DEFENDANTS BE ORDERED TO EMPLOY AN ADEQUATE DOCTOR THAT WILL NOT COMPROMISE HEALTH AND WELL BEING

OF INMATES

11. THAT DEFENDANTS BE ORDERED TO IMPLEMENT A SPANISH TRANSLATION OF THE KEEFER COMMISSARY RECEIPTS.

(EX A)

EX A

ERIE COUNTY SHERIFF'S OFFICE – JAIL MANAGEMENT DIVISION

DISCIPLINARY REPORT

Inmate Name		ICN#	H.U. #	Date of Report
MONTALVO MISHEL		131327	1428-3	2-16-13
Location of Offense		Date/Time of Offense		Reporting Officer
FOX NORTH		4/14/13 1000		Pfizer
CHARGE#	OFFENSE			CLASS
104-18	CONTRABAND THAT BY DESIGN ENDANGER SAFETY/SECURITY			A
106-0	DISORDERLY CONDUCT THREATENING SAFETY/SECURITY/ORDER			B
107-C	FALSE STATEMENTS AND/OR UNLAWFUL STATEMENTS THAT ARE			C

NARRATIVE

ON THIS DATE FEBRUARY 16, 2013, AT APPROXIMATELY 1000 HRS ON FOX NORTH THIS DEPT WAS COLLECTING DEPOSITS. INMATE 28-3 MONTALVO MISHEL TURNED IN A PRISON THAT LOOKED A LITTLE DIFFERENT. UPON FURTHER INVESTIGATION THIS DEPT FORGED THE PLASTIC OFF AND FOUND THE PRISON HAD BEEN REPLACED WITH A SILVER ONE TO LOOK LIKE A PRISON. THIS DEPT THEN LOCKED INMATE MISHEL AND NOTICED THE PRISON WAS NOT THE SAME AS THE PRISON HE HAD PREVIOUSLY SEEN. MISHEL WAS SEARCHED BY TWO DEPT WITH HIS ROOM AND PROPERTY. AT 11:15 AM THIS DEPT WAS NOTICED BY INMATE MISHEL AND ADVISED THAT HE HAD BEEN SEARCHED. AFTER FURTHER QUESTIONING, THE INMATE ADVISED THAT HE HAD BEEN SEARCHED BY TWO DEPT WITH HIS ROOM AND PROPERTY. AT 11:15 AM THIS DEPT WAS NOTICED BY INMATE MISHEL AND ADVISED THAT HE HAD BEEN SEARCHED. AFTER FURTHER QUESTIONING, THE INMATE ADVISED THAT HE HAD BEEN SEARCHED BY TWO DEPT WITH HIS ROOM AND PROPERTY.

Under penalty of perjury, I attest that the above
Statements are true to the best of my knowledge and belief

Signature of reporting Officer

Badge #

Date

Inmate's Receipt

I have been advised of my rights with regard to the disciplinary process and have been provided with a written copy of the disciplinary charges filed against me.

Inmate's signature

Date

☐ Inmate refused to sign receipt

Witness signature

Waiver

I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee.

Inmate's Signature

Date

SUPERVISOR'S REVIEW

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

☐ Forward to the Disciplinary Committee

Signature of Reviewing Supervisor

Date

NOTIFICATION OF INMATE'S RIGHTS

- ♦ You will be given an opportunity to be heard in your own behalf.
- ♦ You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- ♦ You will receive written notice of the decision of the Disciplinary Committee.
- ♦ You may appeal the decision of the Disciplinary Committee, in writing within 2 business days, to the Chief of Operations.
- ♦ If you refuse to attend your Disciplinary Hearing, the hearing will be held without you being present. Your refusal to attend may result in the forfeiture of your right to appeal the Committee's decision. (Watson V. Coughlin 517 N.Y.S.2d 620 [A.D. 1987])

(EX B)

EX B

ERIE COUNTY HOLDING CENTER DISCIPLINARY HEARING RECORD

Inmate Name	ICN#	Housing Unit / #	Date of Report
MONTALVO, MISAEL	131327	FNDR 28-3	2-16-13
Location of Offense	Date / Time of Offense	Incident #	Reporting Officer
FOX NORTH	2-16-13 1000		PRIZEL

<input checked="" type="checkbox"/> Defendant Present at Hearing <input type="checkbox"/> Defendant Refused to Attend X <i>M. Montalvo</i> (Inmate's Signature)	Charges	Class	Inmate's Plea	Findings
	104-1A	A	G NG	G NG
	106-B	B	G NG	G NG
	109-C	C	G NG	G NG
NOTES			G NG	G NG
			G NG	G NG
			G NG	G NG
			G NG	G NG

INMATE'S STATEMENT

I Admitted I took the Bazor, I know that I was wrong. This is the last problem that you will have (I mean).

The finding of INNOCENCE / GUILT is based upon the following credible evidence presented at the hearing:

SANCTIONS IMPOSED:

- | | |
|---|--|
| <input type="checkbox"/> Officer's direct observations.
<input type="checkbox"/> Inmate's statement(s).
<input type="checkbox"/> Review of INCIDENT REPORT J-28.
<input type="checkbox"/> Review of physical evidence.
<input type="checkbox"/> Witness statement(s).
<input type="checkbox"/> Other _____ | <input type="checkbox"/> Time Served
<input type="checkbox"/> Verbal reprimand
<input type="checkbox"/> Probation: _____ days; _____ days KLNP if violated
<input type="checkbox"/> Restitution: \$ _____ payable from existing/future funds
<input checked="" type="checkbox"/> Loss of privilege(s): <u>KL</u> for <u>180</u> days
<input type="checkbox"/> Disciplinary Segregation: _____ days
<input type="checkbox"/> Recommend Admin. Action: _____ |
|---|--|

Sanctions to run for a period of 180 days, From 2/16/13 to 3/14/13

You will be returned to general population on 3/14/13 at 6:30 p.m.

DISCIPLINARY COMMITTEE

DAY: _____

DATE: _____

TIME: _____

Sgt. P. [Signature]
Disciplinary Committee Signature

[Signature]
Disciplinary Committee Signature

Disciplinary Committee Signature

(EX C)

P.O. BOX 840100
KANSAS CITY, MO 64184-0100

NAME: MONTALVO MISAE

ORDER DATE: 2/22/13

NBR: 131327

ORDER NBR: 608

BLOCK: ECHO TIER: G CELL: EA

CPR NBR: 00598

SITE: ERIE CO CORRECTIONAL FACILITY 27743J 001

BES FUND BAL

PAGE

ORDER	SITE:	KEEFE	ITEM	ITEM#	ITEM DESCRIPTION	ITEM PRICE	TOTAL PRICE
1	0147	822336	P-UP A/P DED	DRIVE	2.60	2.60	
1	0398	28933	DIAL TRANSLU	SOAP	1.20	1.20	
1	1060	28235	8.5 X 11 LET	540 UHT	1.15	1.15	
1	1094	82016	MINT-REN				
10	2100	901445	N/5 55 ORANG	ORNG	1.00	1.00	

Secure Items

5	1001	8983	LARGE STAMPE	ENVELOPE	60	3.00
SUB-TOTAL						10.60
SALES TAX						.67
ORDER TOTAL						11.27
END BALANCE						24.27

LIST SHORTAGES AND/OR DAMAGES HERE:

ITEM# QUANTITY CATEGORY/DESCRIPTION

B

~~XXXXXXXXXX~~

SIGNED

Misael Montalvo

DATE

2/22/13

WITNESSED BY

DATE

2/22/13

(EX D)

EX D

ERIE COUNTY SHERIFF'S OFFICE



JAIL MANAGEMENT DIVISION

10/10/2013

TO: Montalvo, Misael 12127

FSO 81

RE: Grievance 13G-156

Please read the decision of the Chief Administrative Officer

Please check that you have read his decision, Then;

Check;

I agree to accept the decision, or:

I wish to appeal to the Citizen's Policy and Complaint Review Council

Sign the form.

Then you must return the form within business two days by 10/14/2013 or
the grievance will be closed.

Thank you,

Chief A. Harris

Chief Administrative Officer

EX D



New York State Commission of Correction



Grievance Form Part I

Facility: Erie County Sheriff's Office—Jail Management Div.

- ☐ Holding Center NY014023C 1403
☐ Correctional Facility NY014013C 1402
☐ Yankee Compound NY011043C 1410

Housing Location: fx SouthGrievance #: 136-156

FACILITY ASSIGNS THIS NUMBER

Inmate's Name: Montalvo MisaelICN #: 131387

Brief Description of the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached ()

We were told to lock in by Deputy Brown #1286 on Sept 29th for noise the pod was quiet all night, there is 50 people in our unit and never have a problem until he works. He refused me a grievance and said if I want one he will hit me in the box. He threatened the pod and at one point got into a inmates face with threats to physically harm him. Brown used verbal abuse brings tension to an environment that's never had or caused a serious problem.

Action Requested by the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached ()

He should be under review for his temper towards inmates. Also the facility should have counseling for violent C.O's / Deputies.

He should not be allowed to work in the pods with all his personal problems.

Grievant Signature: Misael MontalvoDate/Time Submitted: Sept 30 2013Receiving Staff Signature: [Signature]

1293

Date/Time Submitted: 9/30/13 1534

Summary of Facility Staff attempts to resolve (Attach Relevant Documentation):

Number of Additional Sheets Attached ()

unable to resolve unit L/D due to excessive noise per Sgt Balyse

- ☐ Language Barrier, List language _____; Name of Interpreter and affiliation _____
☐ Cognitive Disability Barrier, Low literacy If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature: [Signature]Date/Time: 9/30/13

() I agree to accept the informal resolution to my Grievance

☒ I do not agree to accept the informal resolution to my GrievanceGrievant Signature: Misael MontalvoDate/Time Submitted: 9/30/13

Forward to the Grievance Coordinator:

Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: [Signature]Date/Time: 9/30/13 2110

Received by the Grievance Coordinator:

Grievance Coordinator Signature: Sgt FRANKLINDate/Time: 10/1/13 0700

EXD

ERIE COUNTY HOLDING CENTER DISCIPLINARY HEARING RECORD

Inmate Name	ICN#	Housing Unit / #	Date of Report
Montalvo, Misael	131327	B-SH 44	10/6/13
Location of Offense	Date / Time of Offense	Incident #	Reporting Officer
E. So. Common Area	10/6/13 2200		Brown

<input type="checkbox"/> Defendant Present at Hearing <input type="checkbox"/> Defendant Refused to Attend <input checked="" type="checkbox"/> (Inmate's Signature)	Charges	Class	Inmate's Plea		Findings	
	106-B	B	G	NG	G	NG
	107-J	C	G	NG	G	NG
	106-G	B	G	NG	G	NG
	107-I	C	G	NG	G	NG
NOTES			G	NG	G	NG
			G	NG	G	NG
			G	NG	G	NG

INMATE'S STATEMENT:

I DIDN'T LOGIC IN BECAUSE THE DEK
 REQUESTED TO NOTIFY THE SGT, AND I
 WANTED TO PLEAD MY CASE.

The finding of INNOCENCE / GUILT is based upon the following credible evidence presented at the hearing:	SANCTIONS IMPOSED:
<input checked="" type="checkbox"/> Officer's direct observations. <input checked="" type="checkbox"/> Inmate's statement(s). <input type="checkbox"/> Review of INCIDENT REPORT J-28. <input type="checkbox"/> Review of physical evidence. <input type="checkbox"/> Witness statement(s). <input type="checkbox"/> Other _____	<input type="checkbox"/> Time Served <input type="checkbox"/> Verbal reprimand <input checked="" type="checkbox"/> Probation: <u>10</u> days; <u>5</u> days KLNK if violated <input type="checkbox"/> Restitution: \$ _____ payable from existing/future funds <input type="checkbox"/> Loss of privilege(s): _____ for _____ days <input type="checkbox"/> Disciplinary Segregation: _____ days <input type="checkbox"/> Recommend Admin. Action: _____
Sanctions to run for a period of <u>10</u> days, From <u>10/7/13</u> to <u>10/17/13</u> You will be returned to general population on _____ at 6:30 p.m.	

DISCIPLINARY COMMITTEE	DAY: <u>WED</u>	DATE: <u>10/7/13</u>	TIME: <u>0800</u>
<u>[Signature]</u>	<u>[Signature]</u>	<u>[Signature]</u>	
Disciplinary Committee Signature	Disciplinary Committee Signature	Disciplinary Committee Signature	

ERIE COUNTY SHERIFF'S OFFICE • JAIL MANAGEMENT DIVISION

DISCIPLINARY REPORT

EX D

Inmate Name		ICN#		H.U. #		Date & Time of Report	
Mustache Misen		131327		Lx South - 31		10-6-13	
Location of Offense		Date/Time of Offense		Incident #		In Date	
Lx South - Common Area		10-6-13 11:00 AM					
CHARGE#	OFFENSE						CLASS
106-B	Disobedient Conduct - which results threatens safety security or good order of facility						B
107-J	Failure to immediately obey and follow a staff member						C
106-J	making unreasonable noise						C
106-G	Harassment / obscene language / gestures						B

NARRATIVE

On above date, officer + me this deputy gave inmate mustache (131327) a direct order to stop talking. Inmate loud for the 1st and 2nd floor to inmate 1st floor. This deputy gave him a few direct orders before inmate comply. Then inmate came running down stairs saying "Look that fucker I want to talk to Sgt 14". The inmate came up to this deputy and said "Look you fucker I want to talk to you". This deputy explained to inmate that he can't talk to him and that he should talk to the inmate on 1st floor. Inmate said "Look you fucker I want to talk to you". Inmate pointed his right eye at this deputy saying "Look you fucker". This deputy gave inmate mustache a direct order to get away from him and to stop. Inmate came comply. No further incident. At this time Sgt 14 End of Report.

DO NOT

Under penalty of perjury, I attest that the above Statements are true to the best of my knowledge and belief:

Signature of reporting Officer

Badge #

Date

Inmate's Receipt

Waiver

I have been advised of, and provided with a written copy of the disciplinary charges filed against me.

I understand that I am entitled to a minimum of 24 hours to prepare a defense, prior to any disciplinary proceeding. I voluntarily waive that right and request that my hearing be held at the next scheduled meeting of the Disciplinary Committee.

Inmate's Signature

Date

Inmate's Signature

Date

☒ Inmate refused to sign receipt.

Signature of Employee & Title

Signature of Employee & Title

SUPERVISOR'S REVIEW

This report meets the standards for disciplinary reports as established by the Jail Management Division of the Erie County Sheriff's Office.

☒ Forward to the Disciplinary Committee

☐ File

Signature of Reviewing Supervisor

Date

NOTIFICATION OF INMATE'S RIGHTS

- You will be given an opportunity to be heard in your own behalf.
- You will be provided with a minimum of 24 hours in which you may prepare a defense and present it to the Disciplinary Committee. You may submit a written statement, which will be maintained as part of the record. You may request that witnesses be called to testify, or to submit written statements on your behalf.
- You will receive written notice of the decision of the Disciplinary Committee.
- You may appeal the decision of the Disciplinary Committee, in writing within two (2) business days, to the Superintendent or Designee.
- If any good time is revoked; on or about ten (10) days prior to your minimum outdate, you may apply to the Disciplinary Committee for restoration of lost good time.

(EX E)

ERIE COUNTY SHERIFF'S OFFICE

EX E



JAIL MANAGEMENT DIVISION

4/29/2014

TO: Montalvo, Misael 131327

F SO 81

RE: Grievance 14RG-164

Date Grievance Submitted: 4/26/2014

I have received and reviewed your Inmate Grievance dated 4/26/2014

Pursuant to 9NYCRR7032.4(h) Program Requirements:

Grievances regarding issues that are outside the authority of the chief administrative officer to control are not grievable and may be returned to the inmate by the grievance coordinator. Such grievances may not be appealed to the chief administrative officer or the Citizens' Policy and Complaint Review Council.

A Health Care Professional determines all medical actions related to your health care plan. This may include, but is not limited to: any treatments, diets, medications, medication dosages, decisions related to hospitalization and consultations to any outside health care professional. Medical related actions are outside the authority of the Chief Administrative Officer.

Therefore, this shall serve to inform you that your grievance dated 4/26/2014 cannot be processed and is being returned to you. This grievance may not be appealed to the Chief Administrative Officer or to the Citizens' Policy and Complaint Review Council.

Thank you.

Sgt. McAndrew

Grievance Coordinator

CC: Grievance File



RECEIVED
DIAGNOSTIC
COMMISSARY
ITEMS.

New York State Commission of Correction

Grievance Form Part I

EX E

Facility: Essex County Sheriff's Office—Jail Management Div.
☒ Holding Center NY014023C 1403
☐ Correctional Facility NY014013C 1403
☐ Yankee Compound NY011043C 1410

Housing Location: Fox South

Grievance #: 1426-104
 FACILITY ASSIGNING THIS NUMBER

Inmate's Name: Miguel MontalvoCN #: 131327

Brief Description of the Grievance (Completed by the Grievant):

Number of Additional Sheets Attached (4)

INMATE STATES SEE 4 PGS OF STATEMENT OF FACTS ATTACHED

Action Requested by the Grievant (Completed by the Grievant):

Number of Additional Sheets Attached ()

1. I AM REQUESTING TO BE ALLOWED TO PURCHASE COMMISSARY FOOD ITEMS
2. I AM REQUESTING THAT ECHC OFFICIALS REFRAIN FROM COMMITTING ANY FURTHER DISCRIMINATION AGAINST ME

Grievant Signature: Miguel MontalvoDate/Time Submitted: 4-26-14Receiving Staff Signature: V. C. [Signature] 1302Date/Time Submitted: 4/26/14 1:34 PM

Signature of Facility Staff (Attach to resolve (Attach Relevant Documentation):

Number of Additional Sheets Attached (4)

There is nothing this facility can do regarding commissary choices for Diabetics

3 Language Barrier, List language: _____; Name of Interpreter: _____

3 Cognitive Disability Barrier, Low literacy: If box is checked, what steps were taken to assist grievant? (List above)

Officer/Supervisor Signature: _____

Date/Time: _____

() I agree to accept the informal resolution to my Grievance

X I do not agree to accept the informal resolution to my Grievance

Inmate Signature: Miguel MontalvoDate/Time Submitted: 4/26/14 - 4:14 PMForward to the Grievance Coordinator: Grievance must be forwarded to the Grievance Coordinator within 24 hours of submission

Officer/Supervisor Signature: _____

Date/Time: _____

Received by the Grievance Coordinator: 06Grievance Coordinator Signature: D. [Signature]Date/Time: 4/28/14 10:00

EX E

MICHAEL MONTHLICK
ECHC
40 DELAWARE AVE
BUFFALO NY 14202

GRIEVANCE COORDINATOR
ECHC
40 DELAWARE AVE.
BUFFALO NY 14202

APRIL 26 2014

1. WHEREAS ECHC IS A PUBLIC ENTITY WITH FIFTY OR MORE EMPLOYEES, AND AS SUCH, ECHC IS SUPPOSED TO COORDINATE IT'S EFFORTS TO COMPLY WITH TITLE II OF THE ADA AND SUBSECTION 504 OF THE REHABILITATION ACT.
2. THE FEDERAL DISABILITIES ACT STATES TITLE II OF THE PUBLIC ENTITY SECTION PROVIDES THAT, "NO QUALIFIED INDIVIDUAL WITH A DISABILITY BE EXCLUDED FROM PARTICIPATION IN OR BE DENIED THE BENEFITS OF THE SERVICES, PROGRAMS OR ACTIVITIES OF A PUBLIC ENTITY OR BE SUBJECTED TO DISCRIMINATION BY ANY SUCH ENTITY." SECTION 504 OF THE REHABILITATION ACT ROUSE V. PLANTIER 997 F SUPP 575-582 (D.N.J. 1998) (EVIDENCE THAT BY FAILING TO TREAT THEIR DIABETES, THE DEFENDANTS EXCLUDED PRISONERS FROM PARTICIPATION IN SOME PROGRAMS SUPPORTED

EX E

A CLAIM UNDER THE ADA) VACATED ON OTHER
GROUNDS 182 F.3d 1912

(3RD CIRCUIT 1998) *CRIVELLO V. HOLY FAMILY
HEALTH PLUS* 13 F. Supp. 2nd 737, 746

(N.D.I. 11 1998) (INSULIN DEPENDANT DIABETES
IN ITS UNTREATED FORM "MEETS ALL THE PRONGS"
OF THE ADA'S DISABILITY DEFINITION)

PROVIDES THAT NO OTHERWISE QUALIFIED
INDIVIDUAL WITH A DISABILITY IN THE UNITED
STATES SHALL SOLELY BY REASON OF HIS OR
HER DISABILITY BE EXCLUDED FROM THE

PARTICIPATION OR BE DENIED THE BENEFITS OF
OR BE SUBJECTED TO DISCRIMINATION UNDER

ANY PROGRAMS OR ACTIVITIES RECEIVING
FEDERAL FINANCIAL ASSISTANCE OR UNDER ANY

PROGRAM OR ACTIVITY CONDUCTED BY ANY
EXECUTIVE AGENCY ... (ECHO D.O.C) THIS MEANS

THAT ANY AGENCY INCLUDING THE D.O.C SHERIFF'S
OFFICE ETC. THAT RECEIVES ANY FEDERAL

FUNDING IS COVERED BY THE REHABILITATION ACT
FOR ALL OF ITS SERVICES PROGRAMS AND ACTIVITIES

FEDERAL AGENCIES AND PRISONS ARE NOT SUBJECT TO
THE ADA BUT THEY ARE SUBJECT TO THE

REHABILITATION ACT. DEPARTMENT OF JUSTICE

REGULATIONS ORIGINATED UNDER THE STATUTES ARE
APPLICABLE TO ALL PRISONS AND JAILS.

3. IN ADDITION, I AM QUALIFIED WITH A KNOWN DISABILITY (DIABETES) WITH SUCH TERMS IS DEFINED UNDER TITLE II OF THE ADA. I HAVE BEEN INCARCERATED AT ECHC AS OF NOV. 19, 2011 AND I HAVE BEEN PURCHASING COMMISSARY UP UNTIL FEB. 2013.
4. MOREOVER, SINCE THE KEEFE COMMISSARY ENTITY HAS TAKEN OVER THE COMMISSARY PROGRAM AT ECHC I HAVE BEEN DISCRIMINATED AGAINST AS A DISABLED PERSON AND DENIED THE BENEFITS OF THE COMMISSARY PROGRAM SUCH AS FOOD ITEMS.
5. WHEREFOR, THE JAIL MANAGEMENT DIVISION INMATE HANDBOOK PG 14 AND THE MEDICAL HEALTH DEPARTMENT WITHIN ECHC HAS IMPLEMENTED A POLICY THAT DIABETES CANNOT PURCHASE ANY FOOD ITEMS FROM COMMISSARY.
6. ALTHOUGH ECHC HAS FAILED TO PROVIDE DIABETICS WITH AN ADEQUATE DIET MENU, DIABETIC INMATES ARE BEING DISCRIMINATED AGAINST, LIMITED AND DENIED EQUAL PARTICIPATION IN THE COMMISSARY PROGRAM.

7 THE ADA REGULATES THAT COVERED ENTITIES MAKE A SELF EVALUATION OF EXISTING POLICIES THAT DISCRIMINATE AGAINST DISABLED PERSONS. A PUBLIC ENTITY MUST MODIFY THOSE POLICIES THAT LIMIT OR DENY DISABLED PERSONS FROM FULL PARTICIPATION IN THEIR PROGRAMS 28 C.F.R. 35 PART 105.

8 THEREFORE, ECHC OFFICIALS AND THE MEDICAL STAFF HAS RECKLESSLY DISREGARDED THE ADA AND REHABILITATION ACT FOR THE SELF PURPOSE OF INFLECTING CUSTOMS, POLICIES AND PRACTICES THAT DISCRIMINATINGLY INDIFFERENT TO DIABETIC INMATES.

(EX F)

EX F



STATE OF NEW YORK • EXECUTIVE DEPARTMENT
STATE COMMISSION OF CORRECTION
Alfred E. Smith State Office Building
80 S. Swan Street, 12th Floor
Albany, New York 12210-8001
(518) 485-2346
FAX (518) 485-2467

CHAIRMAN
Thomas A. Beilein

COMMISSIONERS
Phyllis Harrison-Ross, M.D.
Thomas J. Loughren

March 18, 2014

Erie County Sheriff's Office
Sheriff Timothy Howard
10 Delaware Avenue
Buffalo, NY 14202

Re: Grievance # 13-LG-41576 - Facility # 13G-156 Misael Montalvo

Dear Sheriff Howard :

The Citizen's Policy and Complaint Review Council has reviewed the above-referenced grievance at its March 13, 2014 meeting and the Council voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Loughren".

Thomas J. Loughren
Commissioner

cc: Grievance Coordinator
Misael Montalvo